In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. Petition No.1550/2005
Virendra Singh ***Versus*** State

Date of Order ::: 12/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. N.S.Shekhawat, for petitioner
Mr. Arun Sharma, Public Prosecutor

Instant petition U/s 482, CrPC has been filed by accused against order dt.14/01/05 whereby Judl. Mag. Weir (Bharatpur) rejected application U/s 70(2) CrPC for converting non-bailable warrant into bailable in Cr.Case No.330/95, which was upheld by Addl. Sess. Judge NO.2, Bayana in Cr.Rev.-38/05 vide order dt.08/11/05.

Petitioner is charged with offence U/s 379, IPC and was facing trial but his bail bonds were forfeited on 17/09/99 as he failed to appear before trial Court, and thereafter efforts were made to ensure his presence and finally standing arrest warrant was issued; at this stage, he filed application for converting standing arrest warrant into bailable warrant, which was rejected by learned trial Court vide order impugned.

Grievance of petitioner is that he is serving as Driver in Rajasthan State Road Transport

Corporation. It is very strange that employee of the Road corporation against whom there was standing arrest warrant issued, could not have been arrested in execution of arrest warrant for sufficient long time and no explanation even otherwise has come forward on record about disappearance for last so many years, thereby trial could not have been concluded only for aforesaid reason that petitioner failed to surrender. Since application of petitioner U/s 70(2) CrPC has been rejected vide order impugned, he has every apprehension that if he surrenders, will be arrested on the same day, which may cause loss of his service.

In **State of UP Vs Poosu (1976(3) SCR 1005** referred to in **Indermohan Vs. State UC** (**JT 2007(11) SC 499=(2007(V) AD (Cr)(SC) 369),** Apex Court observed ad infra:

> **".. Broadly speaking,** the court would take into account the various factors **such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State."**

In **Indermohan Vs. State of UC** (supra), it has been held that non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired

result. Apex Court also observed ad infra:

> **"56... There cannot be any straight jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."**

Be that as it may, looking to the fact that petitioner is serving as Driver in RSRTC and despite standing warrant, still could not have been produced in Court, in the interest of justice, summoning him through non-bailable warrant in view of the nature of offence is not justified and to this extent, this order impugned requires interference in inherent jurisdiction U/s 482, CrPC.

Consequently, misc. petition is partly allowed alongwith stay petition; and the order dt.14/01/05 impugned stands modified and summoning petitioner through non-bailable warrant stands converted into bailable warrants provided petitioner appears within on or before 21/01/08 before the learned trial Court, and if files bail application simultaneously, it may be considered by the trial Court in accordance with law; and in case he fails to appear as directed (supra), trial Court will be free to proceed under law to procure presence of petitioner.

(**Ajay Rastogi), J.**